

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Alfred Bickley, #55150,)	C/A No.: 0:08-2037-HMH-BM
)	
Plaintiff,)	
)	
vs.)	Report and Recommendation
)	
L.T. Harrish; Alvin S. Glenn Dt. Ctr.,)	
)	
Defendants.)	

Plaintiff, a pre-trial detainee, files this matter pursuant to 42 U.S.C. § 1983 against an employee of the Alvin S. Glenn Detention Center (Harrish), and the Detention Center itself. According to the complaint, plaintiff was placed in an isolation cell with three other detainees without the benefit of a mat or blanket where he remained for approximately seven hours. Plaintiff alleges he was taken to the isolation cell by Harrish to “cool down with-out (sic) the benefit of being officially charged in an incident report/Fair and impartial hearing by disciplinary board.” *See Complaint @ 3*. Plaintiff attaches a copy of a grievance he filed pertaining to this matter, in response to which he was told “a shakedown was in process [and] in this process it the officers job to go through all property belonging to the inmate. Officer Smith did his job. You failed to comply with directives given. That is why you went to SHU for cooldown.” *See Attachments to the Complaint* (entry # 1, attachment # 1).

Plaintiff also attempts to raise claims on behalf of other inmates. He alleges these inmates are placed in a one man shower, with bars, which has, among other things, bugs and mold on the walls and floors. *See Complaint @ 3-4*. Plaintiff seeks punitive damages plus costs and a written reprimand for Harrish. He also wants a permanent impartial judicial panel to be placed at the Detention Center to “handle all infractions of the future.” *Id. @ 5*.

Under established local procedure in this judicial district, a careful review has been made of the *pro se* complaint pursuant to the procedural provisions of 28 U.S.C. § 1915, 28 U.S.C. § 1915A, the Prison Litigation Reform Act, and in light of the following precedents: *Denton v. Hernandez*, 504 U.S. 25 (1992); *Neitzke v. Williams*, 490 U.S. 319, 324-25 (1989); *Haines v. Kerner*, 404 U.S. 519 (1972); *Nasim v. Warden, Maryland House of Correction*, 64 F.3d 951 (4th Cir. 1995) (*en banc*); *Todd v. Baskerville*, 712 F.2d 70 (4th Cir. 1983); and *Boyce v. Alizaduh*, 595 F.2d 948 (4th Cir. 1979). *Pro se* complaints are held to a less stringent standard than those drafted by attorneys, *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir.), and a federal district court is charged with liberally construing a complaint filed by a *pro se* litigant to allow the development of a potentially meritorious case. See *Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Cruz v. Beto*, 405 U.S. 319 (1972); *Fine v. City of N. Y.*, 529 F.2d 70, 74 (2nd Cir. 1975). However, even when considered under this less stringent standard, the complaint submitted in the above-captioned case is subject to summary dismissal. The requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim currently cognizable in a federal district court. *Weller v. Department of Soc. Servs.*, 901 F.2d 387 (4th Cir. 1990).

As an initial matter, it must be noted that plaintiff does not have standing to assert claims on behalf of other detainees. See *Laird v. Tatum*, 408 U.S. 1 (1972). See also *Valley Forge Christian College v. Americans United for Separation of Church & State*, 454 U.S. 464, 482 (1982); and *Flast v. Cohen*, 392 U.S. 83, 99 (1968)(a district court, when determining whether a plaintiff has standing to sue, must focus on the status of the party who has filed the complaint). See also *Lake Carriers Ass'n v. MacMullan*, 406 U.S. 498, 506 (1972), and *Hummer v. Dalton*, 657 F.2d 621, 625-626 (4th Cir. 1981)(a prisoner cannot act as a "knight-errant" for others). Cf. *Oxendine v. Williams*, 509 F.2d 1405, 1407 & n. * (4th Cir. 1975)(a *pro se* prisoner cannot be an advocate for others in a class

action); and *McNeil v. Guthrie*, 945 F.2d 1163, 1164 & nn. 1-2 (10th Cir. 1991). If a plaintiff lacks standing, there is no "case or controversy[.]", and if there is no "case or controversy[.]" a district court lacks subject-matter jurisdiction over the issues presented. *Valley Forge Christian College v. Americans United for Separation of Church & State, supra*, 454 U.S. at 476. See also *Estate of Kerner v. United States*, 895 F.2d 1159, 1162 & n. 3 (7th Cir. 1990), where the Court noted: "the plaintiff generally must assert his own legal rights and interests, and cannot rest his claim on the legal rights or interests of third parties." Hence, plaintiff cannot assert any claim on behalf of any other detainee at the Alvin S. Glenn Detention Center.

With regard to the Alvin S. Detention Center itself being named as a defendant, inanimate objects – such as buildings, facilities, and grounds – do not act under color of state law. Hence, this defendant is not a "person[s]" subject to suit under 42 U.S.C. § 1983. See *Allison v. California Adult Authority*, 419 F.2d 822, 823 (9th Cir. 1969)(California Adult Authority and San Quentin Prison not "person[s]" subject to suit under 42 U.S.C. § 1983). See also *Staley v. South Carolina Department of Corrections, et. al.*, 2003 WL 23541770 (D.S.C. Dec. 04, 2003)(Civil Action No. 9:03-3436-23BG), affirmed *Staley v. South Carolina Department of Corrections*, 96 Fed. Appx. 928 (4th Cir. (S.C.) May 21, 2004)(Not selected for publication in the Federal Reporter, No. 04-6022). As a result, the Alvin S. Glenn Detention Center is entitled to dismissal as a party defendant.

As for plaintiff's allegations against the defendant Harrish that he was placed in an isolation cell for approximately seven hours, federal courts are required to accord great consideration to a correctional system's need to maintain order, discipline, and control. *Wolff v. McDonell*, 418 U.S. 539, 558-562 (1974). Further, there is no constitutional right for a state or federal prisoner to be housed in a particular institution, at a particular custody level, or in a particular portion or unit of a correctional institution. See *Olim v. Wakinekona*, 461 U.S. 238 (1983); and *Ange v. Paderick*, 521

F.2d 1066 (4th Cir. 1975), Thus, the placement and assignment of inmates into particular institutions or units by state or federal corrections departments are discretionary functions, and are not subject to review *unless* state or federal law places limitations on official discretion. *Hayes v. Thompson*, 726 F.2d 1015, 1016-1017 & n.1 (4th Cir. 1984)(collecting cases).

Cases previously decided in this judicial district make it clear that South Carolina law confers no protected liberty interest upon inmates of the South Carolina Department of Corrections (SCDC) from being classified, or being placed in administrative segregation, in a particular prison, or in a particular section of a prison. *See, e.g., Keeler v. Pea*, 782 F. Supp. 42, 43-44, (D.S.C. 1992), (citing *Meachum v. Fano*, 427 U.S. 215 (1976)). *See also Vice v. Harvey*, 458 F. Supp. 1031, 1034 (D.S.C. 1978); and *Brown v. Evatt*, 322 S.C. 189, 470 S.E.2d 848 (1996)(South Carolina Supreme Court held that neither state statutes creating/defining SCDC's powers nor SCDC's operational classification regulations created a liberty interest in security or custody classifications). In fact, it is well settled that the placement of inmates into administrative segregation units is a valid means of minimizing a "threat to security of the institution, threat to the safety of other residents or Jail staff, etc." *Jackson v. Bostick*, 760 F. Supp. 524, 528 (D.Md. 1991). *See also Hewitt v. Helms*, 459 U.S. 460, 468 (1983)("[T]he transfer of an inmate to less amenable and more restrictive quarters for nonpunitive reasons is well within the terms of confinement ordinarily contemplated by a prison sentence.");¹ *Anderson v. County of Kern*, 45 F.3d 1310, 1316 (9th Cir. 1995)(prison officials have legitimate penological interest in administrative segregation, and they must be given "wide-ranging deference" with respect to their need to maintain order, discipline, and "institutional security"),

¹ Unrelated portions of the holding in *Hewitt v. Helms* have been superannuated by later case law. This portion of the holding in *Hewitt v. Helms* has not been superannuated by later case law.

rehearing denied, 75 F.3d 448 (9th Cir. 1995), *cert. denied*, *County of Kern v. Anderson*, 516 U.S. 916 (1995); and *Montanye v. Haymes*, 427 U.S. 236, 242 (1976)(if a prisoner's confinement is within terms of the sentence imposed upon him and does not violate other constitutional provisions, "the Due Process Clause does not in itself subject an inmate's treatment by prison authorities to judicial oversight"). Here, plaintiff's placement in an isolation cell for a few hours as a "cool down" period following an apparent dispute with a correctional officer does not implicate a constitution right or violation. If plaintiff contends some jail policy or procedure was violated by his brief placement in this case, he can pursue an administrative remedy within the jail or an action in State Court, if appropriate.

RECOMMENDATION

Accordingly, it is recommended that the Court dismiss the complaint in the above-captioned case *without prejudice* and without issuance and service of process. See *Denton v. Hernandez*, *supra*; *Neitzke v. Williams*, *supra*; *Haines v. Kerner*, *supra*; *Brown v. Briscoe*, 998 F.2d 201, 202-204 & n.* (4th Cir. 1993), *replacing* unpublished opinion originally tabled at 993 F.2d 1535 (4th Cir. 1993); *Boyce v. Alizaduh*, *supra*; *Todd v. Baskerville*, *supra*, 712 F.2d at 74; 28 U.S.C. § 1915(e)(2)(B); and 28 U.S.C. § 1915A [the court shall review, as soon as practicable after docketing, prisoner cases to determine whether they are subject to any grounds for dismissal].

Columbia, South Carolina
June _____, 2008

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Brislaw Marchant
United States Magistrate Judge

The plaintiff's attention is directed to the important notice on the next page.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Court Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. In the absence of a timely filed objection, a district court judge need not conduct a de novo review, but instead must "only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005).

Specific written objections must be filed within ten (10) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three (3) days for filing by mail. Fed. R. Civ. P. 6(a) & (e). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985).